Supreme Court, U.S.
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No. 02-1602

In The

Supreme Court of the United States

HEALTHCARE RECOVERIES, INC.,

Petitioner,

v.

KYLE M. HAMILTON,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Kyle M. Hamilton ("Kyle"), plaintiff and respondent, respectfully requests that the Court deny the petition for writ of certiorari filed by Trover Solutions, Inc. d/b/a Healthcare Recoveries, Inc. ("HRI"), defendant and petitioner, for the following reasons:

INTRODUCTION

Based on a group health policy issued to Kyle's father, United Healthcare of Louisiana, Inc. ("United") paid for Kyle's medical treatment for severe injuries sustained in an automobile accident. The United policy contains subrogation and reimbursement provisions regarding recoveries that its policyholders may receive from third parties. Since 1998, United has contracted with HRI to enforce and collect amounts due under those provisions. This lawsuit claims that HRI's enforcement of United's subrogation provisions against Kyle violated the Fair Debt Collection Practices Act ("FDCPA"), 15 USC 1692, *et seq.*

1. There Is No Conflict in the Circuits' Interpretation of "Debt" under the FDCPA

Insurance is plainly a consumer transaction under the FDCPA. The Fifth Circuit concluded that United's *contract*-based claim regarding Kyle's third party recoveries is a "debt" under 15 USC 1692a(5) of the FDCPA. "We cannot avoid the inescapable conclusion that the plain meaning of 'debt' encompasses the funds owed in this case. There is no question that the obligation to pay arose out of Hamilton's transaction of purchasing insurance. HRI is simply incorrect in its assertion that the obligation to pay arose out of

a tortious act." *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002).

This is consistent with other Circuits' interpretation of "debt." "[T]he plain language of the Act defines 'debt' quite broadly as 'any obligation to pay arising out of a [consumer] transaction.' In examining this definition, we first focus on the clear and absolute language in the phrase, 'any obligation to pay.' Such absolute language may not be alternatively read to reference only a limited set of obligations as appellants suggest . . . As long as the transaction creates an obligation to pay, a debt is created." *Bass v. Stoper, Koritzinsky, Brewster & Neider*, 111 F.3d 1322, 1325 (7th Cir. 1997); *See Also, Duffy v. Landberg*, 133 F.3d 1120, 1123 (8th Cir. 1998), *cert. denied*, 525 U.S. 821 (1998); *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379, 401 (3rd Cir. 2000); *Romea v. Heiberger & Assoc.*, 163 F.3d 111, 115 (2nd Cir. 1998); and, *Arruda v. Sears, Roebuck & Co.*, 310 F.3d 13, 23 (1st Cir. 2002).

The Fifth Circuit's decision does not conflict with *Pollice* because United's *contract*-based claims against Kyle are not analogous to the *legislatively*-created property tax obligations that the Third Circuit described as due "not from the purchase of property but from the fact of ownership." *Id.*, 225 F.3d at 402. *Pollice* establishes that United's claim against Kyle is a "debt" because the obligation to pay money is derived from the purchase of the United policy.

The Fifth Circuit's decision relied on, and is consistent with, the Seventh Circuit's decision in *Bass. Hamilton*, 310 F.3d at 391-392. Further, the Seventh Circuit extends the FDCPA's protections beyond the obligation to pay for the original transaction. *See, Miller v. McCalla, Raymer*, 214

F.3d 872, 874-875 (7th Cir. 2000); and, *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 119 F.3d 477, 481-482 (7th Cir. 1997); *See Also, Ladick v. Van Gemert*, 146 F.3d 1205, 1206-07 (10th Cir. 1998), *cert. denied*, 525 U.S. 1002 (1998).

The Fifth Circuit's decision likewise does not conflict with *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998). In that case, Liberty Mutual paid its insured victim for the damages caused by an accident with Hawthorne, and Mac Adjustment handled the subrogation claim against Hawthorne, the tortfeasor. The Eleventh Circuit held that Liberty Mutual's subrogation claims against the tortfeasor – who was *not* insured by Liberty Mutual – did not involve a consumer transaction because the insurer's claim "arose purely out of an accident, [and] involved no contract of any type between the [tortfeasor] and the damaged party, the insurer or Mac Adjustment." *Id.*, 140 F.3d at 1372, n. 2. In contrast, Kyle's alleged obligation to pay money is *solely* based on the insurance contract with United.

HRI's argument that the payment due for the transaction itself is the only obligation that arises out of a consumer transaction is the "extension of credit" limitation that has been rejected by every Circuit that has addressed that issue. *Bass*, 111 F.3d at 1326; *Brown v. Budget Rent-A-Car Systems, Inc.*, 119 F.3d 922, 924 (11th Cir. 1997) ("Budget's assertion that Brown is obligated as a result of a consumer transaction suffices to bring the obligation within the ambit of the FDCPA."); *Snow v. Jesse L. Riddle, P.C.*, 143 F.3d 1350, 1353 (10th Cir. 1998); *Charles v. Lundgren & Associates*, 119 F.3d 739, 742 (9th Cir. 1997), *cert. denied*, 522 U.S. 1028 (1997); *Duffy*, 133 F.3d at 1123; *Pollice*, 225 F.3d at 400-401); and, *Romea*, 163 F.3d at 115. The FDCPA defines

"debt" as "any obligation" to pay money "arising out of" a consumer transaction, which does not mean *only the obligation to pay for* the consumer transaction.

The Fifth Circuit determined that "arising out of" is "ordinarily understood to mean 'originating from,' 'having its origin in,' 'growing out of' or 'flowing from,' or in short, 'incident to,' or 'having connection with.'" *Hamilton*, 310 F.3d at 391, *quoting*, *Red Ball Motor Freight v. Employers Mutual Liab. Ins. Co.*, 189 F.2d 374, 378 (5th Cir. 1951). Based on *Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943-944 (5th Cir. 1999), the dissenting judge in this case argued that "arising out of" requires a causal nexus between the underlying transaction and the obligation to pay money, but such a nexus undeniably exists in this case.

The use of "arising out of" establishes that a series of events may be required to trigger the obligation to pay. In *Brown*, Mr. Brown ran a Budget rental truck into an overpass, and Budget sought reimbursement for the amounts that Mr. Brown's personal insurer refused to pay. *Id.*, 119 F.3d at 923. Because Budget's claims arose as a result of the consumer transaction – Mr. Brown's rental of the truck, the Eleventh Circuit concluded that Budget's claim was a "debt" under the FDCPA. *Id.* at 924. Likewise, while a series of events may have been necessary to trigger the obligation, Kyle's alleged obligation is *solely* based on a consumer transaction: the United insurance contract.

2. United's Subrogation Contract-Based Subrogation Claims Are Not Torts

Under Louisiana law, health insurers have no subrogation rights unless the insurance contract includes provisions

for such rights; there are no other legal, equitable or implied rights of subrogation. *Martin v. Louisiana Farm Bureau Cas. Ins. Co.*, 638 So.2d 1067, 1069 (La. 1994). That subrogation can also be based on the payment of contractual or legal obligations owed or due by another refutes HRI's argument that "subrogation interests are tort claims" rather than consumer debts. The nature of the subrogated debt does not take away from the fact that United's alleged subrogation rights are derived from a consumer transaction – the insurance contract issued to Kyle's father.

CONCLUSION

The Fifth Circuit correctly held that HRI collected and is seeking to collect "debts" under the FDCPA because the alleged obligation to pay money to United arises directly out of a consumer insurance transaction. Kyle M. Hamilton, plaintiff and respondent, respectfully requests that the Court deny HRI's petition for writs of certiorari.

Respectfully submitted:

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